

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRIARWOOD FARMS, INC.,

07 CIV. 3657 (CLB)

Plaintiff,

- against -

TOLL BROS., INC.,

ECF CASE

Defendant.

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**DECLARATION IN SUPPORT OF
TOLL BROS., INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT**

WILLIAM P. HARRINGTON, under penalty of perjury, declares the following:

1. I am a member of Bleakley Platt and Schmidt, LLP, counsel for defendant Toll Bros., Inc. ("Toll"). I am fully familiar with the facts and circumstances set forth herein.

2. I submit this declaration in opposition to plaintiff's motion for summary judgment and in support of Toll's motion for summary judgment pursuant to Rule 56(a)(2) on its First Counterclaim for Declaratory Judgment and Monetary Relief as against plaintiff Briarwood Farms, Inc. ("Briarwood").

3. Attached hereto as Exhibit "1" is a copy of plaintiff's complaint.¹

4. Attached hereto as Exhibit "2" is a copy of Toll's Answer.

5. Attached hereto as Exhibit "3" is a copy of the Agreement of Sale.

¹ Plaintiff designated motion exhibits by letter. Therefore, to avoid any confusion, Toll has designated exhibits by number.

6. Attached hereto as Exhibit “4” is a copy of Memorandum dated December 30, 2005, by Village Engineer P.J. Corless.
7. Attached hereto as Exhibit “5” is a copy of is a copy of Memorandum dated December 31, 2005, by Village Engineer P.J. Corless.
8. Attached hereto as Exhibit “6” is a copy of Village of Pomona Code Book, Version 08-2007, Chapter 118, entitled *Subdivision of Land*, which was reprinted from the Village of Pomona web-site on June 16, 2008 (www.pomonavillage.com/codebook/html).
9. Attached hereto as Exhibit “7” is a copy of Village of Pomona Code Book, Version 08-2007, Chapter 119, entitled *Site Development Plan Review*, which was reprinted from the Village of Pomona web-site on June 16, 2008 (www.pomonavillage.com/codebook/html).
10. Attached hereto as Exhibit “8” is a copy of the deposition transcript of Village of Pomona Engineer P.J. Corless dated March 25, 2008.
11. Attached hereto as Exhibit “9” is a copy of the proposed preliminary subdivision plat which includes a Disturbed Slope Map.
12. Attached hereto as Exhibit “10” is a copy of Toll Brothers, Inc.’s December 22, 2006 letter to Briarwood.
13. Attached hereto as Exhibit “11” is a copy of the Planning Board of the Village of Pomona’s January 12, 2006 resolution granting preliminary subdivision approval.
14. Attached hereto as Exhibit “12” is a copy of Toll’s January 22, 2007 letter to Briarwood.

15. Attached hereto as Exhibit "13" is a copy of Briarwood's counsel's
January 30, 2007 letter to Toll.

Dated: White Plains, New York
June 18, 2008



WILLIAM P. HARRINGTON (WH-5262)